



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO CA 95814-2922

REPLY TO
ATTENTION OF

September 28, 2010

Regulatory Division SPK-2009-01008

Chris McCourt
Alton Coal Development, LLC
463 North 100 West, Suite 1
Cedar City, Utah 84721

Dear Chris McCourt:

We are responding to your February 9, 2010 request for an approved jurisdictional determination for the Alton Coal Development, LLC, Coal Hollow Surface Mine and associated Kane County Road #136 relocation project. The proposed 635.64-acre surface coal mine and 3.1-mile County Road #136 relocation project are located approximately 3 miles south of Alton, in Sections 19, 20, 29, 30, and 31, Township 39 South, Range 5 West, and Sections 24 and 25, Township 39 South, Range 6 West, Salt Lake Meridian, Latitude 37.3977 North, Longitude 112.4657 West, Kane County, Utah.

Based on available information, **we concur with the estimate of waters of the United States, identified as "Wetlands 11 through 16, Lower Robinson Creek-Ephemeral Segment, Lower Robinson Creek-Intermittent Segment 1, and Unnamed Ephemeral Streams 1 and 3", on the December 18, 2009/revised May 10, 2010, Wetland Delineation Map Index drawing prepared by Frontier Corporation USA and "Lower Robinson Creek-Intermittent Segment 2 and Unnamed Ephemeral Streams 4 through 6, on the January 22, 2010, Plan and Profile for Alton Coal Development County Road Realignment drawing prepared by Boss Engineering & Surveying and, on May 14, 2010, revised by Frontier Corporation USA.** Approximately 0.11 acres and 8,661 linear feet of waters of the United States, including wetlands, are present within the survey area. The waters on the above drawings are regulated under Section 404 of the Clean Water Act since they are non-relatively permanent waters, or wetlands directly abutting non-relatively permanent waters, that meet the significant nexus standard as described in the Rapanos guidance, and are tributary to Kanab Creek, an interstate water, that is tributary to the Colorado River, a traditionally navigable water.

The 1.42-acre waters identified as "Wetlands 1 through 10, and 17" and the 605-linear feet non-wetland water identified as "Unnamed Ephemeral Stream 2", on the December 18, 2009/revised May 10, 2010, Wetland Delineation Map Index drawing prepared by Frontier Corporation USA, are intrastate isolated waters with no apparent interstate or foreign commerce connection. As such, these waters are not currently regulated by the Corps of Engineers. This disclaimer of jurisdiction is only for Section 404 of the Federal Clean Water Act. Other Federal, State, and local laws may apply to your activities.

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DIV. OF OIL, GAS & MINING

This verification is valid for five years from the date of this letter, unless new information warrants revision of the determination before the expiration date. This letter contains an approved jurisdictional determination for your subject site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331.

A Notification of Appeal Process and Request for Appeal (RFA) form is enclosed. If you request to appeal this determination you must submit a completed RFA form to the South Pacific Division Office at the following address: Administrative Appeal Review Officer, Army Corps of Engineers, South Pacific Division, CESPDPDS-O, 1455 Market Street, San Francisco, California 94103-1399, Telephone: 415-503-6574, FAX: 415-503-6646.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the NAP. Should you decide to submit an RFA form, it must be received at the above address by 60 days from the date of this letter. It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

You should provide a copy of this letter and notice to all other affected parties, including any individual who has an identifiable and substantial legal interest in the property.


This determination has been conducted to identify the limits of Corps of Engineers' Clean Water Act jurisdiction for the particular site identified in this request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

We appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing the customer survey on our website under *Customer Service Survey*.

Please refer to identification number SPK-2009-01008 in any correspondence concerning this project. If you have any questions, please contact Karen Clementsen at 321 North Mall Drive, Suite L-101, St. George, UT 84790-7310, email Karen.L.Clements@usace.army.mil, or telephone 435-986-1961. For more information regarding our program, please visit our website at www.spk.usace.army.mil/regulatory.html.

Sincerely,



 Jason A Gipson
Chief, Nevada-Utah Regulatory Branch

Enclosure(s):

Wetland Delineation Map Index drawing

Plan and Profile for Alton Coal Development County Road Realignment drawing

Notification of Appeal Process and Request for Appeal Form

Copy furnished without enclosure(s):

Charles Williamson, State of Utah Division of Water Rights, PO Box 146300, Salt Lake City, Utah 84114-6300

✓Darron Haddock, Utah Division of Oil, Gas and Mining, PO Box 145801, Salt Lake City, Utah 84114-5801

Keith Rigtrup, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, Utah 84721-9337

Lou Prat, Kane County, 76 North Main Street, Kanab, Utah 84741

Dennis Wenger, Frontier Corporation USA, 221 N Spring Creek Parkway, Suite B, Providence, Utah 84332